

# CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE

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## CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE

### 9.1 INTRODUCTION

This chapter provides guidance for the local agency in complying with the Civil Rights requirements (Title VI, Accessibility, Equal Employment Opportunity [EEO] Contractor Compliance) and Disadvantaged Business Enterprise (DBE) requirements for federal-aid transportation projects. Each of these areas is addressed in more detail in the following sections. The information contained in this section has been extracted from other documents and should not be considered as a replacement or substitute for the laws, rules and regulations, agreements, circulars, and other guidance available.

The Division of Local Assistance (DLA) web site at:

<http://www.dot.ca.gov/hq/LocalPrograms/> provides additional information and resources that complements guidance in this chapter.

### 9.2 NONDISCRIMINATION: TITLE VI OF THE CIVIL RIGHTS ACT

Nondiscrimination provisions apply to all programs and activities of federal-aid recipients, sub-recipients, and contractors, regardless of tier (49 Code of Federal Regulations (CFR), Part 21). The obligation not to discriminate is based on the objective of Congress not to have funds, which were collected in a nondiscriminatory manner used in ways that subsidize, promote, or perpetuate discrimination based on race, color, national origin, sex, age, or physical or mental disability, sexual orientation or retaliation.

The reach of Title VI in the areas of Environmental Justice and the needs of Limited English Proficient populations has expanded jurisdiction, clients, and complexity. Environmental Justice (EJ) Executive Order 12898, amplifies Title VI by identifying and addressing, as appropriate, disproportionately high and adverse human health, or environmental effects of federal-aid projects on minority populations and low-income populations. The order is also intended to promote nondiscrimination in federal programs substantially affecting human health and the environment, and to provide minority communities and low-income communities access to public information and an opportunity for public participation in matters relating to human health or the environment.

Limited English Proficiency (LEP), Executive Order 13166, clarifies national origin discrimination as it affects persons with limited proficiency in English. The order requires federal-aid recipients to take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and information free of charge.

Language barriers prohibit LEP persons from:

- Obtaining services and information relating to transportation services, programs, and projects.
- Taking advantage of the transit system, which could affect their jobs and social opportunities.

- Understanding the benefits to which they are entitled when their home or business property is acquired through eminent domain.

## IMPLEMENTING TITLE VI

The DLA is responsible for developing policies and procedures in order for local agencies to implement Title VI. DLA has included checks and balances throughout its processes including legal review of major agreements and documents.

**Title VI Assurances:** Local agencies sign this assurance as part of their Master Agreement with Caltrans (see Exhibit 4-C “Master Agreement-Sample,” Chapter 4 of the *Local Assistance Procedures Manual* [LAPM]). The Program Supplement Agreement for each project includes the local agency’s reaffirmation of the Nondiscrimination Assurances contained in the Master Agreement.

**Environmental:** Presidential Executive Order 12898 (EJ) is considered during the preliminary environmental investigation process and completion of the Preliminary Environmental Study (PES) Form. See Exhibits 6-A “Preliminary Environmental Study (PES) Form,” and B “Instructions for Completing the Preliminary Environmental Study (PES) Form,” Chapter 6 of the LAPM or refer to this web site:

[http://www.dot.ca.gov/hq/LocalPrograms/lam/prog\\_p06envrp.pdf](http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p06envrp.pdf)

If a project requires that a Relocation Impact Study and/or Community Impact Assessment be conducted, the local agency follows the guidance set forth in the *Standard Environmental Reference* (SER). The SER is an on-line electronic reference that sets forth document content and format, as required by law or regulation and recommended format, if not specified by law or regulation. Chapter 25 of the SER addresses Environmental Justice (EJ) and LEP requirements:

<http://i80.dot.ca.gov/ser/vol1/sec3/community/ch25ej/chap25ej.htm>

**Public Hearings and Public Involvement Meetings:** The attendance and concerns of LEP persons, persons with disabilities, minority populations, and low income populations at public involvement meetings and hearings must be carefully documented to comply with Title VI of the Civil Rights Act of 1964, including statistics of participants by race and gender. Public hearing announcements must be made available in languages understood by the affected population. Public hearings should be held at locations that are both geographically and structurally accessible. Interpreters should be made available for LEP persons and for the hearing impaired (see Chapter 8, “Public Hearings,” of the LAPM.).

**Local Agency Contact with LEP Persons:** Each local agency receiving federal-aid funds shall perform an annual assessment to determine if modifications are needed to their program and activities to ensure full access by LEP persons. See LEP Plan at the following Caltrans Title VI website:

[http://www.dot.ca.gov/hq/bep/title\\_vi/LEP/index.htm](http://www.dot.ca.gov/hq/bep/title_vi/LEP/index.htm)

**Right of Way:** On federal-aid projects, all Right of Way (R/W) activities are conducted in accordance with the *Caltrans Right of Way Manual*, unless the local agency has adopted its own procedures, which Caltrans has approved. The *Caltrans Right of Way Manual* requires that the public be provided with Title VI information and complaint procedures within each of the following R/W functions: Appraisals, Acquisition, Relocation Assistance Program (RAP) and Property Management (see Chapter 13, “Right of Way,” of the LAPM).

**Construction:** Federal-aid construction contracts must include provisions, which require compliance with Title VI. The specific contract provision language is included in the Federal Highway Administration (FHWA) Form 1273 that is physically inserted in the federal-aid construction contract (see Chapter 12, “Plans, Specifications and Estimate,” of the LAPM).

**Additional Resources for Title VI Implementation:** You may access additional information on implementing Title VI (including Potential Title VI Issues, Self Monitoring, Good Practices and Mitigation Measures) in the electronic version of the Caltrans Title VI Guide Book:

[http://www.dot.ca.gov/hq/bep/title\\_vi/t6\\_guidelines\\_choice.htm](http://www.dot.ca.gov/hq/bep/title_vi/t6_guidelines_choice.htm).

Title VI brochures in ten languages are available on the DLA web site under Title VI:

[http://www.dot.ca.gov/hq/LocalPrograms/DBE\\_CRLC/DBE\\_CRLC.html#TitleVI](http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html#TitleVI)

## MONITORING TITLE VI

There are a number of actions that have been developed for the local agencies in meeting federal requirements. Attendance at public meetings by the District Local Assistance Engineer (DLAE) and receiving copies of the meeting minutes during the planning stages of local agency projects help to ensure nondiscrimination and EJ are properly being addressed at these early stages of a project.

To ensure continued compliance by the local agencies, checklists along with a review of the Plans, Specifications & Estimate (PS&E) and attendance at public meetings are some of the tools that are used initially, and then used later to facilitate the DLA in performing process reviews and other quality assurance functions. The local agency checklists and PS&Es are reviewed by the DLAE upon receipt to ensure compliance with Title VI as well as other federal and state regulations.

**Plans, Specifications & Estimate (PS&E) Checklist:** This checklist ensures that the federal and state contract requirements are being implemented. Specifically, it confirms the implementation of the mandatory requirements of FHWA Form 1273, EEO Certification, DBE provisions, and applicable wage rates, etc. The local agency submits the checklist to the DLAE along with the request for authorization to proceed with construction for federal-aid construction contracts.

Local agency PES, technical reports, Environmental Assessment (EA) and Environmental Impact Statements (EIS) provide for data collection and analysis on the demographics of neighborhoods and communities. The DLAEs and Caltrans Environmental Specialists review the environmental documents to ensure that no disproportionate adverse impacts occur on minority and low-income neighborhoods or communities.

Both the DLAE and the Caltrans District Right of Way staff monitor R/W activities on local projects (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM.) to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

**Local Agency Construction Contract Administration Checklist:** This checklist confirms that DBE and Labor/EEO compliance requirements are performed and documented in the project files. This checklist documents that the local agency will meet all of these requirements prior to the award of the construction contract (see Chapter 15, “Advertise and Award Project,” of the LAPM).

**Resident Engineer’s Construction Administration Checklist:** This checklist is completed by the local agency Resident Engineer. The purpose of the checklist is to assist the local agencies in administering federal-aid highway construction projects. This checklist documents that the data is similar to the Local Agency Construction Contract Administration Checklist. It also provides a record that the EEO/Wage Rate/False Statements Posters are being posted at specific locations, that employee interviews will be conducted in accordance with the Labor Compliance/EEO Interview form, and that DBE requirements are met. The local agency submits the checklist along with the award package shortly after award of the construction contract (see Chapter 15, “Advertise and Award Project,” of the LAPM).

## TITLE VI COMPLAINTS

The procedures in this section have been established to receive and resolve alleged civil rights discrimination complaints concerning a local agency project or projects constructed with federal-aid funds. Caltrans will investigate and submit a report of findings to FHWA within 60 days of receipt of the complaint. The complainant will be informed by the Caltrans Discrimination Complaint Investigation Unit (DCIU) staff of his/her right to appeal the Caltrans findings to FHWA California Division. An appeal will be accepted by FHWA up to 180 days FROM THE DATE OF RECEIPT OF THE DECISION.

Caltrans will include a summary report of its findings on all Title VI complaints in its annual Title VI update report to FHWA.

## 9.3 ACCESSIBILITY

Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC Subsection 791 et seq.) requires that any entity receiving federal financial assistance must ensure that persons with disabilities are not discriminated against in any and all aspects of employment, or denied access to the goods or services that these federal fund recipients provide.

The intent of the Americans with Disability Act (ADA) (Public Law 101-336, codified as 42 USC 12101 et seq.) is to “assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.” This law extended the protections offered for persons with disabilities.

28 CFR, Part 35 requires that facilities constructed by on behalf of, or for the use of a public entity shall be designed and constructed so that the facility is accessible to and usable by persons with disabilities.

49 CFR, Part 27 requires nondiscrimination on basis of disability in programs and activities receiving or benefiting from federal financial assistance.

The State of California has also adopted regulations –Title 24 of the California Government Code, specifying that all buildings, structures, sidewalks, curbs, and related facilities constructed in California by the use of State, county or municipal funds, or the funds of any political subdivision of the State, shall be accessible to and usable by persons with disabilities.

## IMPLEMENTATION

**Assurances:** Administering agencies sign this assurance as part of their Master Agreement with Caltrans (see Exhibit 4-C “Master Agreement-Example,” Chapter 4 of the LAPM). The Program Supplement Agreement for each project includes the administering agency’s reaffirmation of the Nondiscrimination Assurances contained in the “Local Agency-State Agreement for Federal-Aid Projects.”

**Self Evaluation and Transition Plan:** 49 CFR, Part 27 requires local agencies as part of receiving US DOT federal financial assistance to:

1. evaluate their current policies and practices to ensure nondiscrimination on the basis of disability in the design, construction, and maintenance of transportation and pedestrian facilities within their respective jurisdictions.
2. identify deficiencies and remedies to correct deficiencies.
3. develop a transition plan or schedule that includes milestones or measures of achievement.
4. develop a system for periodically reviewing and updating the evaluation and transition plan.

**Designation of an ADA Coordinator:** As part of receiving US DOT federal financial assistance, each local agency shall designate an ADA Coordinator, who coordinates the efforts of the administering agency to comply with 49 CFR, Part 27.

**Adoption of Grievance Procedures:** A local agency that employs fifteen (15) or more persons and is receiving US DOT federal financial assistance is required to adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination on basis of disability.

**Design:** State and local governments, regardless of whether they receive federal financial assistance, are required to comply with the Federal ADA Accessibility Guidelines (ADAAG), Title 24, or local code, whichever provides the greatest access. Private-funded improvements are required to comply with the ADAAG and with Title 24, whichever code offers the greatest access or protections to individuals with disabilities.

All new and existing altered pedestrian facilities such as, but not limited to, highway rest area facilities, sidewalks, crosswalks, pedestrian overpasses, underpasses and ramps, shall be made accessible to persons with disabilities in accordance with federal and state accessibility standards on all local agency federal-aid projects (see Chapter 11, “Design Standards,” of the LAPM).

**Certification:** Local agencies certify compliance with federal and state laws in the PS&E checklist (see Chapter 12, Section 12.15, and Exhibits 12-D and 12-E, of the LAPM).

## MONITORING

**Local Agency Annual ADA Submittal Form:** Each local agency must provide the Caltrans DLAE a completed “ADA Annual Submittal Form for Local Agencies,” (see Exhibit 9-C in this chapter) by June 1 of each year for the following Federal Fiscal Year (FFY) (October 1 – September 30). This form must be received prior to submitting a “Request for Authorization” to proceed with a federal-aid project.

This form includes:

1. Designated ADA Coordinator information (name, address, phone number, and e-mail address).
2. Certification that the local agency has an updated Self Evaluation and Transition Plan. (If the local agency does not have an updated Self Evaluation and Transition Plan, then the local agency provides an estimated date that they will have one.)
3. Certification of the adoption of a grievance procedure. (If the local agency does not have a grievance procedure, then the local agency provides an estimated date that they will have one.)

**Field Reviews:** During the field review, agreement is reached among all interested parties (local agency, DLAE, FHWA) on the general design features and exceptions for the project. ADA deficiencies are discussed and agreed upon at this time (see Chapter 7, “Field Reviews,” of the LAPM.).

**Plans Specifications & Estimate (PS&E) Checklist:** Local agencies certify that their project’s PS&E complies with all applicable federal and state regulations and codes. A PS&E checklist form helps to ensure local agency compliance. ADA compliance is included in this checklist (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM).

**Final Inspection:** The local agency conducts the final inspection and certifies on the Final Inspection Form that the project was constructed in accordance with the scope and description of the project authorization document and that all federal and state requirements have been met. The DLAE reviews the job site and verifies completion on the Final Inspection Form (see Chapter 17, “Project Completion,” of the LAPM).

## COMPLAINTS

Please refer to Section 9.3 Accessibility, “Adoption of Grievance Procedures,” in this chapter.

## 9.4 EQUAL EMPLOYMENT OPPORTUNITY (EEO) CONTRACTOR COMPLIANCE

Federal-aid Highway Act of 1968 (23 USC 140(a)) and implementing regulations at 23 CFR 230, require that the local agency receiving federal financial assistance shall assure that employment in connection with federal highway construction projects is provided without regard to race, color, creed, national origin or sex.

The local agency is also required to include notification of a federal-aid contractor’s EEO responsibilities in the advertised contract specifications. In addition, the local agency shall maintain and make available apprenticeship, skill improvement or other upgrading programs, which provide equal opportunity for training and employment without regard to race, color, creed, national origin or sex.

23 CFR 635.117 – Sets forth FHWA policies and procedures relating to federal-aid highway projects from authorization to final acceptance by FHWA. It includes a statement encouraging local agencies to use DBEs. Other sections of the CFR include nondiscriminatory bidding procedures, subcontractor and contractor responsibilities,



labor, employment and Native American Indian preference provisions, payroll and statements of wages paid, and contract termination procedures.

Form FHWA 1273 “Required Contract Provisions for Federal-Aid Construction Contracts” is a standard form containing required contract provisions and proposal notices and is required to be physically inserted in each federal-aid highway construction contract and subcontracts (at any tier) of \$10,000 or more. When a contractor signs a federal-aid contract of \$10,000 or more, the nondiscrimination provisions in the Form FHWA 1273 constitutes the contractor’s Equal Employment Opportunity/Affirmative Action Program standards for that contract.

## IMPLEMENTATION

**Assurances:** Local agencies sign assurances as part of their Master Agreement with Caltrans. Appendix A to Exhibit B of the Master Agreement includes nondiscrimination in the selection and retention of sub-applicants and the prohibition of discrimination in employment practices (see Exhibit 4-C “Master Agreement-Example,” Chapter 4, of the LAPM).

**Required Federal Contract Provisions:** Local agencies shall physically insert the Form FHWA 1273 in the contract document. Local agencies are aware that contractor’s noncompliance with the EEO specifications in the Form FHWA 1273 may be considered a breach of contract for which payment may be withheld, or the contract terminated (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM).

**Construction:** Federal-aid prime contractors and subcontractors employment practices in the areas of recruitment and selection decisions (hiring, promotions, terminations, training, etc.) are to be conducted without regard to race, color, creed, national origin, age, disability, or sex.

The local agency’s resident engineer should be cognizant of the contractual requirement and monitor the contractor for compliance. Specifically, the resident engineer’s area of concern should be whether discriminatory practices take place, particularly in the hiring, firing, training, promotion, and utilization of employees (see Chapter 16 Section 16.12 “Equal Employment Opportunity,” of the LAPM).

## MONITORING

The three checklists listed above in the Section 9.2 Nondiscrimination: Title VI of the Civil Rights Act serve to assist local agencies in implementing EEO and as a monitoring tool for DLAEs to ensure that EEO requirements are met. In addition, DLA performs periodic EEO process reviews that include a review of DLAE, local agency, and contractor.

Caltrans Civil Rights includes local agency contracts in their compliance reviews of federal-aid contractors.

## REPORTING

The federal-aid contractor on federal-aid construction contracts that are active during the last full pay period in July completes “Form FHWA PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report,” (see Chapter 16, “Administer Construction Contracts,” of the LAPM).

## 9.5 DISADVANTAGED BUSINESS ENTERPRISE

Caltrans is required under 49 CFR, Part 26 to administer a DBE Program. The DBE Program is intended to ensure a level playing field and foster equal opportunity in federal-aid contracts.

In this manual, federal-aid contracts refer to US DOT assisted-contracts that include funding from the FHWA, Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

### BACKGROUND

For several years, Caltrans through local agencies implemented a DBE Program in accordance with applicable requirements and included race conscious components in the program. In May 2005 the Ninth Circuit Court of Appeals issued a decision on *Western States Paving, Co. vs. Washington Department of Transportation, et al*, which required the State of Washington to comply with new evidentiary standards necessary to constitutionally support the use of race conscious DBE goals such as those being used by Caltrans. The decision is binding on the states within its jurisdiction, including California.

In 2006-2007 Caltrans conducted an Availability and Disparity Study that examined the transportation construction and engineering industry in California for discrimination. The study determined that discrimination exists in the transportation contracting industry and that discrimination appears consistently against African Americans, Native Americans, Asian-Pacific Americans, and Women. Hispanic and Subcontinent Asians were found to be at or near parity. Therefore, Caltrans has resumed the Race Conscious DBE Program. All DBE participation is encouraged and is counted towards California's overall annual goal; however, use of contract goals is limited to the following Underutilized Disadvantaged Business Enterprises (UDBEs): African Americans, Native Americans, Asian-Pacific Americans, and Women,

### DBE DEFINITIONS

**Annual Anticipated DBE Participation Level (AADPL)** - The level of participation that the local agency would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination on federal-aid contracts awarded in its jurisdiction in a given FFY. This includes an assessment of the availability for specific items of work that DBEs could reasonably be expected to compete for subcontracting opportunities on a federal-aid contract, and their likely availability for work on federal-aid contracts that will be awarded in a given fiscal year. The AADPL is not a goal that the local agency needs to achieve, but the AADPL will be used by the Department to establish a statewide overall DBE participation goal as required by Title 49 CFR, Part 26. The local agency must have an approved AADPL on file with the DLAE before federal funds can be authorized on any new federal-aid consultant or construction contract.

**Disadvantaged Business Enterprise (DBE)** - A for-profit "small business concern" that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens (or

lawfully admitted permanent residents) of the United States and (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged by the Small Business Administration (see 49 CFR, Part 26).

**Race Conscious Measure or Program** - One that is focused specifically on assisting only DBEs. The use of contract goals is the primary example of a race conscious measure in the DBE program.

**Race Neutral Measure or Program** - A race neutral measure or program is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can assist a wide variety of small businesses not just DBEs. For purposes here, race neutral includes gender neutrality.

**Small Business Concern** - Small Business Concern means with respect to firms seeking to participate as DBEs in US DOT-assisted contracts, a Small Business Concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR, Part 121) that also does not exceed the cap on average annual gross receipts specified in Section 26.65(b) of 49 CFR.

**Statewide Overall DBE Goal** - As required by federal regulation, Caltrans has established a statewide overall DBE goal. This is the level of participation that Caltrans would expect DBEs to achieve. In order to ascertain whether the Statewide Overall DBE Goal is achieved, Caltrans will track DBE participation on all federal-aid contracts.

**Underutilized Disadvantaged Business Enterprise (UDBE)** - A firm meeting the definition of a DBE as specified in 49 CFR, Part 26 and is one of the following groups: African Americans, Asian-Pacific Americans, Native Americans, or Women.

## **DBE PROGRAM RESPONSIBILITIES**

### **FHWA RESPONSIBILITIES**

The FHWA administers the payment of federal-aid highway funds to recipients: states, counties, cities, and other agencies such as transit districts for transportation-related projects. The FHWA is responsible for monitoring these agencies for compliance with Title VI and other aspects of the Civil Rights Acts of 1964, 1968, and 1973, all concerning nondiscrimination in administration of federal funds.

### **CALTRANS RESPONSIBILITIES:**

#### **Civil Rights responsibilities include:**

- Administering of the State of California Department of Transportation DBE Program Plan (Caltrans DBE Program Plan).
- Maintaining a directory of certified DBE contractors.

- Assisting the DLAE and the DLA in responding to local agency requests for assistance with questions/issues relative to DBE matters.
- Assisting with training to the district and local agency staff.

**Division of Local Assistance and District Local Assistance Engineer**

**Division of Local Assistance responsibilities include:**

- Providing assistance to DLAE and district staff with questions/issues relative to DBE matters.
- Monitoring local agency compliance with DBE program requirements by conducting process reviews. The FHWA is invited to participate in these process reviews.
- Assembling statewide local agency DBE final utilization information and other information for reports to FHWA.
- Monitoring districts for procedure compliance.
- Assisting with training courses for district and local agency staff.

**District Local Assistance Engineer (DLAE) responsibilities include:**

- Monitoring local agency compliance with DBE program requirements by conducting process reviews. The FHWA is invited to participate in these process reviews.
- Ensuring that local agencies with federal-aid contracts submit the local agency's "California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies" (Exhibit 9-A in this chapter).
- Reviewing and approval of the "Local Agency DBE Annual Submittal Form" (Exhibit 9-B in this chapter) for local agencies that award federal-aid contracts during the FFY.
- Serving as the focal point for advice and assistance to the local agencies on DBE matters.
- Ensuring that the "Local Agency Proposer DBE Information (Consultant Contracts)" form Exhibit 10-O2, and "Local Agency Bidder DBE Information (Construction Contracts)" form Exhibit 15-G2 of the LAPM are reported to the DLA for inclusion in the federal Semi-Annual Uniform Report of DBE Commitments/Awards and Payments.
- Ensuring that the "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" (for consultant and contractors) (Exhibit 17-F, of the LAPM)) is reported to the DLA for inclusion in the federal Semi-Annual Uniform Report of DBE Commitments/Awards and Payments to FHWA.
- Providing DBE oversight of local agencies pursuant to the LAPM.

- Reviewing at least one complete PS&E package for the required provisions (including DBE requirements) per year. If deficiencies are discovered, more frequent reviews should be conducted and a corrective action plan is to be submitted by the local agency for the DLAE's approval.
- Maintaining a file with an index of all local agency's DBE Implementation Agreements and DBE Annual Submittal Forms. Information from these forms is entered into LP2000.

### LOCAL AGENCY RESPONSIBILITIES

Local agency responsibilities are detailed in Section 9.6 in this chapter. These responsibilities include:

- Submitting a "California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies" to the DLAE (Exhibit 9-A in this chapter).
- Developing an AADPL and submitting it to the DLAE for review on the "Local Agency DBE Annual Submittal Form" (Exhibit 9-B in this chapter).
- Designating a DBE Liaison Officer, accountable to the Chief Executive Officer of the local agency, to administer the California Department of Transportation Race Conscious DBE Program as it pertains to local agencies.
- Ensuring prompt and full payment to the prime contractor and subcontractor in compliance with the prompt payment clauses of the contract.
- Ensuring that the "Local Agency Proposer DBE Information (Consultant Contracts)" form Exhibit 10-O2, and "Local Agency Bidder DBE Information (Construction Contracts)" form Exhibit 15-G2, of the LAPM are reported to the DLAE within 15 days of contract execution.
- Ensuring that the "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors" form (LAPM, Exhibit 17-F) is reported by the prime contractor or consultant upon completion of the contract.

## 9.6 LOCAL AGENCY RESPONSIBILITIES UNDER CALTRANS DBE PROGRAM PLAN

Local agency recipients of federal financial assistance shall comply with all the elements of Title 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprise in Department of Transportation Financial Assistance Programs." These provisions apply to all federal-aid transportation projects. Local agency responsibilities are detailed in the Caltrans DBE Program Plan. A copy of this plan is available to download from the DLA web site at: [http://www.dot.ca.gov/hq/LocalPrograms/DBE\\_CRLC/DBE\\_CRLC.html](http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html)

As an initial step, each local agency shall submit a “California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Implementation Agreement for Local Agencies” (Exhibit 9-A) to formally acknowledge the local agency’s commitment to implement the California Department of Transportation Disadvantaged Business Enterprise (DBE) Program, and to comply with all the prescribed responsibilities detailed in the Plan and explained in the LAPM.

Each local agency shall also annually submit a “Local Agency DBE Annual Submittal Form” (Exhibit 9-B). This form provides information for the upcoming FFY, which will include:

- 1) Local agency's AADPL
- 2) Methodology for establishing the AADPL
- 3) Identification of the Disadvantaged Business Enterprise Liaison Officer (DBELO)
- 4) Plan of race neutral measures to implement for the forthcoming FFY
- 5) Prompt pay provision to be used in contracts
- 6) Monitoring and enforcement mechanisms to ensure that DBEs are promptly paid

#### **DBE IMPLEMENTATION AGREEMENT FOR LOCAL AGENCIES**

The “California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Implementation Agreement for Local Agencies” (Exhibit 9-A) must be completed and submitted to the DLAE for execution by each agency before a request for authorization is processed. This agreement will need to be signed by a representative who is authorized by the governing body to take such action.

Some of the elements of the Agreement are highlighted below.

#### **OBJECTIVE/POLICY STATEMENT**

Each agreement contains a policy statement expressing a commitment to the Caltrans DBE Program, stating its objectives, and outlining responsibilities for its implementation. Each local agency will circulate the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its DOT-assisted contracts.

#### **DBE ANNUAL SUBMITTAL FORM**

Each local agency must provide the DLAE a completed “Local Agency DBE Annual Submittal Form,” (Exhibit 9-B) by June 1 of each year for the following FFY. This form must be received prior to submitting a “Request for Authorization” to proceed with a federal-aid project. This form will include:

1. The amount of AADPL and the methodology for establishing the AADPL.
2. Designated DBE Coordinator information (name, address, phone number, and e-mail address).

3. Detail of planned race neutral measures to be implemented as required by 49 CFR Part 26.51 and as outlined in Section V of the “California Department of Transportation DBE Program Implementation Agreement for Local Agencies” (Exhibit 9-A).
4. The local agency’s choice for method of prompt payment of withheld funds to subcontractors, as well as a brief explanation of the monitoring and enforcement mechanisms the local agency has in place to ensure that DBEs are promptly paid.

### **RACE NEUTRAL AND RACE CONSCIOUS MEANS OF MEETING THE OVERALL STATEWIDE ANNUAL DBE GOAL**

Each local agency assists Caltrans to achieve its Overall Statewide DBE Goal by using race neutral means of facilitating DBE participation based on items of work and availability of DBEs in their respective market areas to the maximum extent feasible. Each local agency establishes contract goals for UDBEs for the portion of the AADPL that the local agency does not project being able to meet using race neutral means.

### **DBE LIAISON OFFICER**

Each local agency must designate a DBE Liaison Officer (DBELO) who shall have direct independent access to the local agency’s Chief Executive Officer concerning DBE program matters. This person shall be responsible for the duties as described in “California Department of Transportation DBE Program Implementation Agreement for Local Agencies” (Exhibit 9-A). Annually, the DBELO designation will be reported to Caltrans when the local agency completes its “Local Agency DBE Annual Submittal Form” (Exhibit 9-B).

### **REQUIRED CONTRACT CLAUSES**

#### **Contract Assurance**

DBE regulations require the following contract assurance statement in every DOT-assisted contract and subcontract.

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract, or such other remedy as recipient deems appropriate.”

#### **Prompt Progress Payment to Subcontractors**

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than ten (10) days of receipt of each progress payment, unless otherwise agreed to in writing.

In addition, Federal Regulation (49 CFR 26.29) requires a prime contractor or subcontractor to pay a subcontractor no later than thirty (30) days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of the agency. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. These requirements apply to both DBE and non-DBE subcontractors.

#### **Prompt Payment of Withheld Funds to Subcontractors**

Federal Regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor:

1. The local agency may decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
2. The local agency may decline to hold retainage from prime contractors and include a contract clause, obligating the prime contractor and subcontractors to make prompt and full payment of any retainage kept by the prime contractor or subcontractor to all subcontractors within thirty (30) days after the subcontractor's work is satisfactorily completed.
3. The local agency may hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to all subcontractors for satisfactory completion of the accepted work within thirty (30) days after receipt of the retainage. This clause must require the prompt release of retainage payments from the prime contractor to the subcontractor within a specified number of days after the subcontractor's work is satisfactorily completed.

In the above methods, a subcontractor's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented as required by the agency. The work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed, when an agency has made an incremental acceptance of a portion of the contract work. Federal Regulation (49 CFR 26.29) also requires that any delay or postponement of payment among the parties may take place only for good cause, must have the prior written approval of the agency, and that appropriate means of enforcement such as those contained in Section 7108.5 of the California Business and Professions Code must be included in the contract.

Annually, the local agencies choose one of the above three methods to ensure prompt pay. The local agency's choice will be reported to Caltrans when it completes the "Local Agency Annual DBE Submittal Form" (Exhibit 9-B).

#### **BIDDERS LIST**

Each local agency will be required to create and maintain a bidders list consisting of information about all DBE and non-DBE firms that bid or quote to the local agency on DOT-assisted contracts. The bidders list will include the name, address, DBE or non-DBE status, date established, and annual gross receipts of firms.



## 9.7 PROCESS FOR ESTABLISHING ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL)

As required by federal law, Caltrans annually establishes a statewide overall DBE goal. When establishing the overall DBE goal, Caltrans must include the level of DBE participation that local agencies could contribute. Local agencies shall calculate the level of DBE participation and utilization that the agency expects to be achieved on contracts to be awarded in its market area in the following FFY.

This will include an assessment of the subcontracting opportunities for specific items of work and the DBE availability for specific items of work. In other words, that level of subcontracting opportunities that DBEs could reasonably be expected to compete for on a contract, and their likely availability for work on contracts that will be awarded in a given fiscal year. The AADPL is not a goal that the local agency needs to achieve, but the AADPL will be used by Caltrans to establish a statewide DBE participation goal as required by Title 49 CFR, Part 26, Section 26.45.

The AADPL will be submitted to the Caltrans DLAE annually by June 1 in advance of the FFY beginning October 1 for federal-aid contracts using “Local Agency DBE Annual Submittal Form” (Exhibit 9-B), FHWA recipients will follow this process. An exception to this would be, if FTA or FAA recipients were required by FTA or FAA to submit the annual information to them or a designee by another date.

The local agency is not required to obtain Caltrans prior concurrence with the proposed AADPL. However, if the DLAE’s review concludes that the AADPL has not been correctly calculated, or that the method for calculating AADPL is inadequate, the DLAE may, after consulting with the local agency, adjust the AADPL or require that the local agency do so.

For an FHWA recipient, the AADPL should be expressed as a percentage of all federal-aid highway funds that a local agency anticipates to award on FHWA-assisted contracts in the forthcoming fiscal year. If the local agency is also an FTA sub-recipient receiving funds through Caltrans, the percentage is determined in a similar way, but it includes FTA assisted contracts excluding FTA funds used to purchase transit vehicles.

**Specific guidance for calculating the AADPL with the race conscious portion limited to UDBEs can be found in Exhibit 9-D “Calculating the New AADPL” in this chapter.**

### METHODOLOGY—STEP 1

The overall participation availability methodology is a two-step process as described in 49 CFR, Part 26, Section 26.45. The first step is determining a base figure for the relative availability of DBEs that are ready, willing and able to participate in the federal-aid contracting program.

Five methods are described to accomplish this first step, although other methods or combinations of methods to determine a base figure may be used subject to review and comments by DLAE:

## 1. USE OF DBE DIRECTORIES AND CENSUS BUREAU DATA

Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) database, determine the number of all ready, willing and able businesses available in your market that perform work in the same North American Industry Classification System (NAICS) codes. (Information about the CBP database may be obtained from the Census Bureau web site at: [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html).) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. Refer to Exhibit 9-D "AADPL Calculations Including UDBEs" in this chapter for specific guidance for calculating the AADPL.

## 2. USE OF A BIDDERS LIST

By using the required Bidders List, determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all contractors and consultants that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all contractors and consultants to derive a base figure for the relative availability of DBEs in your market. **Note:** If your current Bidders List does not break out DBEs by race and gender, you will have to choose another method for calculating your AADPL.

## 3. USE OF DATA FROM A DISPARITY STUDY

Disparity studies generally contain a wide array of statistical data, as well as anecdotal data and analysis that can be particularly useful in the AADPL-setting process. The data which a good disparity study provides can be an excellent guide for a recipient to use to set a narrowly tailored participation availability percentage. When setting the goal, first use the study's statistical evidence to set a base figure for the relative availability of DBEs. Other study information, whether it is anecdotal data, analysis, or statistical information about related fields, should be included when making adjustments to the base figure (see Step 2 below), but not included in the base figure for the relative availability of DBEs. Any study data relied on in the goal setting process should be as recent as possible and be focused on the transportation contracting industry.

## 4. USE OF THE GOAL OF ANOTHER LOCAL AGENCY

If another DOT recipient in the same or substantially similar market has set an AADPL in compliance with 49 CFR, Part 26, you may use that figure as a base figure for your participation availability percentage.

## 5. USE OF ALTERNATIVE METHODS

Local agencies may use other methods to determine a base figure for their overall participation availability percentage. Any methodology chosen must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a participation availability percentage that is rationally related to the relative availability of DBEs in the local agencies' market.

## METHODOLOGY—STEP 2

Once a base figure has been determined, local agencies must survey their jurisdiction to determine what types of relevant evidence is available to them. Then, relying on their own knowledge of their contracting markets, local agencies must review the evidence to determine whether an up or down adjustment from the base figure is needed. Some types of evidence to consider include the following:

- The current capacity of DBEs to perform work in your DOT-assisted contracting program as measured by the volume of work DBEs have performed in recent years.
- Evidence from disparity studies conducted anywhere within your jurisdiction to the extent it is not already accounted for in your base figure.
- If your base figure is the figure of another recipient, you must adjust it for differences in your local market and your contracting program.

You may also consider available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete. These include, but are not limited to:

- Statistical disparities in the ability of DBEs to get the financing, bonding, and insurance required to participate in your program.
- Data on employment, self-employment, education, training, and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

If you attempt to make an adjustment to your base figure to account for the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

## RACE NEUTRAL AND RACE CONSCIOUS COMPONENTS

You must meet the maximum feasible portion of your overall goal by using race neutral means of facilitating DBE participation. Race neutral DBE participation includes any time a DBE or UDBE wins a prime contract through customary competitive procurement procedures is awarded a subcontract on a prime contract that does not carry a UDBE goal or even if there is a UDBE goal, wins a subcontract from a prime contractor that did not consider its UDBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation (e.g., unbundling large contracts to make them more accessible to small businesses, and requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces.

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses obtain bonding and financing).
3. Providing technical assistance and other services.
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors, provision of information in languages other than English, where appropriate).
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.
6. Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in various types of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
7. Establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low.
8. Ensuring distribution of the DBE directory through print and electronic means to the widest feasible universe of potential prime contractors.
9. Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

A race conscious measure focuses on assisting UDBEs. The use of contract goals is the primary example of a race conscious measure in the DBE program. Local agencies must establish contract goals to meet the portion of their overall goal they do not project being able to meet using race neutral means.

#### **EXPECTED PARTICIPATION**

If a local agency's AADPL is 18%, and the AADPL is segregated into 4% race neutral and 14% race conscious components, then it would be expected that some local agency contracts will have UDBE goals, which will result in an overall participation of 14% of the total local agency federal-aid highway funding for the fiscal year. Also, other local agency contracts will have no UDBE goals, or will have participation that exceeds the contract goal, or DBE participation through a prime contract a DBE obtains through customary competitive procedures, all of which will result in an overall participation of 4% of the total local agency federal-aid highway funding for the same year.

#### **TRANSIT VEHICLE MANUFACTURERS**

If the local agency is also an FTA recipient, the FTA assistance used in transit vehicle procurements is not used in the base amount from which an overall AADPL is calculated.

### **TRANSIT VEHICLE MANUFACTURER'S ANNUAL AVAILABILITY GOAL**

Transit vehicle manufacturers must establish and submit for FTA's approval an annual overall AADPL. In setting the overall AADPL, transit vehicle manufacturers should be guided to the extent applicable by the principles underlying Section 26.49, Part 26 of Title 49 CFR. The base from which transit vehicle manufacturers calculate this AADPL is the amount of FTA financial assistance included in transit vehicle contracts that will be performed during the fiscal year in question. Transit vehicle manufacturers must exclude from this base funds attributable to work performed outside the United States, and its territories, possessions, and commonwealths.

In lieu of complying with the aforementioned procedures, local agencies may, with FTA approval, establish project-specific contract goals for DBE participation in the procurement of transit vehicles. Transit vehicle manufacturers should contact FTA for applicable procedures.

## **9.8 DBE PARTICIPATION ON THE CONTRACT**

### **PARTICIPATION OPPORTUNITIES**

The local agency should structure its project development, contract items, and specifications in a manner that provides opportunities for DBE participation.

Participation by DBEs is possible at four main points in the process for developing local federal-aid transportation projects. They are:

- Preliminary Engineering (PE) and EA
- Final Design
- R/W Acquisition
- Construction, including Construction Management

Preliminary Engineering Studies (PES) and EA are the first steps in developing a local transportation project. DBEs may be engaged to perform all of these activities as a prime consultant or some of these activities as a member of a team of consultants.

Completion of final design and preparation of PS&E normally, are a continuation of PE activities. However, in some situations the agency employs different consultants and professional teams to perform these final design activities. DBEs may be engaged at this point.

Acquisition of R/W for local transportation projects may be performed by the local agency or by a qualified consulting firm. Qualified DBEs may be considered for performance of R/W activities.

DBEs may participate in bidding for construction contracts for projects developed by local agencies. Other opportunities for participation in construction include work as subcontractors, suppliers, vendors, truckers, etc.

## UDBE CONTRACT GOALS

A UDBE contract goal is a percentage of the total contract amount that is expected to be performed by certified UDBE firms. Local agencies may use UDBE contract goals only on those U.S. DOT-assisted contracts that have subcontracting, supplier, or trucking possibilities.

Local agencies are not required to set a UDBE contract goal on every US DOT-assisted contract. Local agencies are not required to set each UDBE contract goal at the same percentage level as the AADPL. The UDBE goal for a specific contract may be higher or lower than that percentage level of the AADPL, depending on such factors as the type of work involved, the location of the work, and the availability of UDBEs for the work of the particular contract. However, over the period covered by the AADPL, UDBE contract goals must be set so that they will cumulatively result in meeting the portion of the AADPL that is not projected to be met through the use of race neutral means.

In some cases, the contract UDBE goal may be zero due to the extremely limited subcontracting opportunities for UDBEs; the lack of certified UDBEs in the geographic area in which work is to be performed; or other reasons. Documentation is required verifying that the local agency has determined that a zero percent UDBE contract goal is appropriate. Documentation may be based on the AADPL methodology with the specific project-related work codes and UDBEs highlighted. Or, if the project has not been included in the AADPL methodology, a separate contract goal methodology must be provided. The DLAE will review and approve the “zero” goal methodology.

In some cases no contract goal may be warranted (which is different than zero percent goal). If for example, the AADPL has already been met for the FFY or the contract is “sole-source” or “nonprofit.”

Caltrans approval of each UDBE contract goal is not necessarily required. However, Caltrans may review and approve or disapprove any UDBE contract goal that a local agency establishes.

## ADJUSTING UDBE CONTRACT GOALS

To ensure that local agencies’ AADPLs are narrowly tailored to overcome the effects of discrimination, it may be necessary for an adjustment in the use of UDBE contract goals during the FFY for which the AADPL applies. This adjustment may be needed as a result of more or less subcontracting items with UDBE opportunities for a contract that was not foreseen during the AADPL analysis.

The scope of work on a contract may differ from what was originally thought of during AADPL analysis. Also, a contract change order may have a direct bearing on the UDBE participation opportunities for the contract. Other reasons may warrant the need for adjustments.

UDBE contract goals may also need adjustment induced by how the AADPL is set. These adjustments may be needed for the following reasons:

1. If the local agency estimates, based on meeting previous year's AADPLs that they can meet their entire AADPL for a given year through race neutral means, they may implement their AADPL without setting UDBE contract goals during that year.
2. If during the course of any year in which UDBE contract goals are used, a local agency determines that it will exceed their AADPL, they must reduce or eliminate the use of UDBE contract goals to the extent necessary. UDBE contract goals are not to be set after the AADPL is achieved. If the local agency determines that it will fall short of their AADPL, then it must make appropriate modifications in their use of race neutral and/or race conscious measures to meet the AADPL.
3. If the DBE participation that was obtained by race neutral means alone meets or exceeds a local agency's AADPL for two consecutive years, the local agency is not required to make a projection of the amount of the AADPL that can be met using such means in the next year. The local agency will not set UDBE contract goals on any contracts in the next year. The local agency will continue using only race neutral means to meet their AADPL, unless and until they do not meet their AADPL for a year.
4. If a local agency obtains DBE participation that exceeds their AADPL in two consecutive years through the use of UDBE contract goals (i.e., not through the use of race neutral means alone), the local agency must reduce their use of UDBE contract goals proportionately in the following year.

Caution is needed regarding making adjustments during the FFY. If a local agency handles a large volume of contracts simultaneously, DBE utilization will occur during different times of a contract. High usage of DBEs that overlap at the same time may seemingly warrant an adjustment—only to make a counter adjustment later when an overlap of low DBE usage occurs. It is also important to note that many contracts will encompass multiple FFYs with DBE usage concentrated unevenly during the contract term.

## **DBE CONTRACT REQUIREMENTS**

The local agency must determine the UDBE contract goal based on the work performed and the availability of certified UDBE contractors in the geographic area (a specific UDBE goal may not be appropriate for every project). UDBE contract goals must be consistent with the following policies

- UDBE contract goals are established in order to achieve fair UDBE participation.
- The project analysis starts with the availability and capacity of certified UDBE contractors (in the project area) to perform the items of work. The contractible items of work are evaluated by the local agency in the light of the project type and size, and normal industry contracting practices.

- All contract bidders or proposers are required to meet the UDBE contract goal, or document that they made an adequate good faith effort to meet the goal if they did not succeed in obtaining the UDBE participation specified in the contract specifications.

#### **LOCAL AGENCY BIDDER OR PROPOSER UDBE COMMITMENT AND DBE INFORMATION FORMS**

A “Local Agency Bidder UDBE Commitment (Construction Contracts)” (LAPM, Exhibit 15-G1) or a “Local Agency Proposer UDBE Commitment (Consultant Contracts)” (Exhibit 10-O1, of the LAPM) must be included in the bid or proposal and provided by each bidder or proposer. The purpose of these forms is to collect data required under 49 CFR 26. The completed form must be submitted to the DLAE at the time of award.

These forms should include the names, addresses and phone numbers of UDBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each UDBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a UDBE, a description of the exact portion of that work to be performed or furnished by that UDBE should be included in the UDBE information, including the planned location of that work. A bidder or proposer certified as a UDBE should describe the work it has committed to perform with its own forces, as well as any other work that it has committed to be performed by UDBE subcontractors, suppliers, and trucking companies.

The bidder or proposer is encouraged to provide written confirmation from each UDBE participating in the contract. A copy of a UDBE's quote will serve as written confirmation that the UDBE is participating in the contract. If a UDBE is participating as a joint venture partner, the bidder or proposer is encouraged to submit a copy of the joint venture agreement.

The “Local Agency Bidder DBE Information (Construction Contracts)” (Exhibit 15-G2) or the “Local Agency Proposer DBE Information (Consultant Contracts)” (Exhibit 10-O2) shall be provided at contract execution—whether or not there is a UDBE goal on the contract. The local agency shall submit this form to the DLAE within 15 days of contract execution for timely reporting. Failure to submit this form timely may result in de-obligation of federal funds for the project. The purpose of these forms is to capture all DBE participation including the UDBE participation, or in instances when there is no UDBE contract goal, DBE participation acquired through normal contracting procedures. DBE participation acquired through normal contracting procedures will be counted towards the race neutral portion of the local agency's AADPL.

#### **FINAL REPORT**

Upon completion of the contract, regardless of whether UDBE and DBE participation is obtained, a summary of the UDBE and DBE records shall be prepared, certified correct, and submitted on the form “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” (Exhibit 17-F) or equivalent by the contractor to the local agency showing total dollars paid to each subcontractor and supplier whether UDBE, DBE or non-DBE. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate.



**Consultant Contracts:** The local agency must send the original plus one copy of the completed “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” (Exhibit 17-F) with the final invoice to the DLAE within thirty (30) days after completion of the contract (see Chapter 10, “Consultant Selection,” of the LAPM).

**Construction Contracts:** The local agency must send the original copy plus one copy of the completed “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” (Exhibit 17-F) to the DLAE as part of its “Report of Expenditure” package before final payment (see Chapter 17, “Project Completion,” of the LAPM).

## COUNTING DBE (INCLUDING UDBE) PARTICIPATION

**Note:** All references to DBEs in this section include UDBEs.

Actual payment to subcontractors that are certified DBEs and performing a commercially useful function will be counted as DBE participation. If the prime contractor is a qualified DBE, his/her work is reported and counted.

“Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” is the DBE utilization form to be completed at the completion of a contract and submitted to the DLAE (see Chapter 17 “Project Completion,” of the LAPM for specific instructions). The information in this report is required by the DBE Program and the FHWA to demonstrate DBE participation on local agency projects.

Specific instances of counting DBE (including UDBE) participations are presented in the following sections. **Note:** Only UDBE participation will count toward the contract goal; however, all DBE participations must be documented and counted toward the local agency’s AADPL.

### PERFORMED BY DBE

When a DBE participates in a contract, count only the value of the work actually performed by the DBE.

- Count the entire amount of that portion of a contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- Count the entire amount of fees or commissions charged by the DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided that the local agency determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted towards DBE participation only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

### **JOINT VENTURE**

When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces towards the DBE participation.

### **COMMERCIALLY USEFUL FUNCTION**

Count expenditures to a DBE contractor, only if the DBE is performing a commercially useful function on that contract. The following examples explain what is considered to be performing a commercially useful function:

- A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the contract for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the local agency must evaluate the amount of work subcontracted; industry practices; whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work; and other relevant factors.
- A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the local agency must examine similar transactions, particularly those in which DBEs do not participate.
- If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
- When a DBE is presumed not to be performing a commercially useful function, as provided in the previous bullet, the DBE may present evidence to rebut this presumption. The local agency's determination as to whether the firm is performing a commercially useful function should be based upon the type of work involved and normal industry practices.
- Local agencies' decision on commercially useful function matters are subject to review by the DLAE.

**DBE TRUCKING**

Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is getting credit on a particular contract, and there cannot be a contrived arrangement for the purpose of counting DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm including an owner-operator, who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.

**MATERIALS AND SUPPLIES**

Count expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE participation.

**Note:** For purposes of counting DBE participation, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation.

**Note:** For purposes of counting DBE participation, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which

the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

To be a regular dealer, the firm must be an established business that regularly engages, as its principal business and under its own name in the purchase and sale or lease of the products in question.

A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not considered regular dealers for purposes of counting DBE participation.

With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees or transportation charges for the delivery of materials or supplies required on a job site toward DBE participation, provided the local agency determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, do not count any portion of the cost of the materials and supplies themselves toward DBE participation.

#### **NOT COUNTING PARTICIPATION**

If a firm is not currently certified as a DBE at the time of the execution of the contract, do not count the firm's participation, except as provided for under "Decertification" of this section.

Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified.

Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or the local agency's overall participation until the amount being counted toward the participation has been paid to the DBE.

#### **APPARENT LACK OF CONTROL**

In order for a firm to become a certified DBE, it should meet the various requirements prescribed in the CFR, as administered by the California Unified Certification Program (CUCP). The DBE must be in control of the firm.

Some situations may arise where the work to be performed by the DBE is being performed by someone else. The local agency will have to use discretion when to investigate, or report apparent cases of fraud to Caltrans. Caution is needed because those involved in performing the work may legitimately be doing so. Three areas are highlighted here:

- Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable. The socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be, such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
- The socially and economically disadvantaged owners must have an overall understanding of, and managerial, technical competence and experience directly related to the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities; to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

### **DBE ELIGIBILITY**

Whether a firm (consultant or contractor) is certified as an eligible DBE, is a decision that is made by the CUCP. The CUCP can also remove the eligibility of a firm and issue a written notice of ineligibility. A directory of certified DBE firms is available from the Caltrans Civil Rights, Certification Unit web site at: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

### **CERTIFICATION**

A potential DBE may request certification from Caltrans by requesting an application form at:

Department of Transportation  
Civil Rights  
Certification Unit  
1823 14<sup>th</sup> Street, MS-79  
Sacramento, CA 95811  
Phone: (916) 324-6346 or (866) 810-6346

The form may also be downloaded from the internet at:  
[http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm)

## **DECERTIFICATION**

Regarding DBE participation on a contract, two different actions can take place depending on when a firm was issued a notice of ineligibility relative to when the contract was executed:

1. When a prime contractor has made a commitment to use a DBE firm or the local agency has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before the issuance of the decertification notice, the ineligible firm does not count toward contract DBE participation.
2. If a prime contractor has executed a subcontract with a DBE firm before the DBE firm was notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE participation for the firm's work. In this case, or in a case where the local agency had let a prime contract to a DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the local agency issued the notice of its ineligibility shall not count toward the local agency's overall participation, but may count toward the contract participation.

## **EXCEPTION**

If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the local agency may continue to count its participation on that contract toward overall and contract participation.

## **APPEAL**

When the CUCP makes an administratively final removal of a firm's eligibility, the firm may appeal the removal to the DOT under Section 26.89 of 49 CFR, Part 26. Caltrans will provide information for an appeal with the removal of eligibility.

## **9.9 GOOD FAITH EFFORTS**

Whether as a bidder or proposer of a U.S. DOT-assisted contract, good faith efforts are required to meet the UDBE contract goal.

When a local agency establishes a UDBE contract goal on a U S DOT-assisted contract a bidder or proposer must, in order to be responsive, make good faith efforts to meet the goal. The bidder or proposer can meet this requirement in either of two ways. First, the bidder or proposer can meet the goal, documenting commitments for participation by UDBE firms sufficient to meet the goal. Second, even if a bidder or proposer does not meet the goal, the bidder or proposer can document adequate good faith efforts. This means that the bidder or proposer must show that they took all necessary and reasonable steps to achieve a UDBE goal. The bidder or proposer could reasonably be expected to obtain sufficient UDBE participation even if they were not fully successful. A local agency shall require a bidder or proposer meet the contract goal in order to be awarded a contract or make good faith efforts.

In any situation in which a contract goal has been established, the use of good faith efforts must be allowed. Each local agency must make a fair and reasonable judgment whether a bidder or proposer that did not meet the goal made adequate good faith efforts. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder or proposer has made. The efforts employed by the bidder or proposer should be those that one could reasonably expect a bidder or proposer to take if the bidder or proposer were actively and aggressively trying to obtain UDBE participation sufficient to meet the UDBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the UDBE contract requirements. We emphasize, however, that local agencies determination concerning the sufficiency of the bidder's or proposer's good faith efforts is a judgment call and meeting quantitative formulas is not required.

Caltrans also strongly cautions local agencies against requiring that a bidder or proposer meet a UDBE contract goal (i.e., obtain a specified amount of UDBE participation) in order to be awarded a contract, only that the bidder or proposer makes good faith efforts. Title 49 CFR, Part 26 specifically prohibits US DOT financial recipients from ignoring *bona fide* good faith efforts.

### ANTICIPATED ACTIONS

The following types of actions should be considered by a local agency as part of the bidder's or proposer's good faith efforts to obtain UDBE participation. It is not intended to be a mandatory checklist, nor is intended to be exclusive or exhaustive. Determining the adequacy of a bidder's or proposer's good faith efforts to achieve DBE goals is a judgment call. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified UDBEs who have the capability to perform the work of the contract. The bidder or proposer must solicit this interest within sufficient time to allow the UDBEs to respond to the solicitation. The bidder or proposer must determine with certainty if the UDBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by UDBEs in order to increase the likelihood that the UDBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate UDBE participation, even when the prime contractor or consultant might otherwise prefer to perform these work items with their own forces.
- Providing interested UDBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested UDBEs. It is the bidder's or proposer's responsibility to make a portion of the work available to UDBE subcontractors and suppliers, and to select those portions of the work or material needs consistent with the available UDBE subcontractors and suppliers, so as to facilitate UDBE participation. Evidence of such negotiation includes: names, addresses, telephone numbers of UDBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached for UDBEs to perform the work.

A bidder or proposer using good business judgment would consider a number of factors in negotiating with subcontractors including UDBE subcontractors, and would take a firm's price and capabilities as well as the UDBE contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using UDBEs, is not in itself sufficient reason for a bidder's or proposer's failure to meet the contract UDBE goal as long as such costs are reasonable. Also, the ability or desire of a prime contractor or consultant to perform the work of a contract with its own organization does not relieve the bidder or proposer of the responsibility to make good faith efforts. Prime contractors or consultants are not, however, required to accept higher quotes from UDBEs if the price difference is excessive or unreasonable.

- Not rejecting UDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's or consultant's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids or proposals in the contractor's or consultant's efforts to meet the project goal.
- Making efforts to assist interested UDBEs in obtaining bonding, lines of credit or insurance as required by the recipient, contractor or proposer.
- Making efforts to assist interested UDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- Effectively using the services of available minority or women community organizations, minority or women contractors' or consulting groups, local, state and federal minority or women business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of UDBEs.

## ADMINISTRATIVE RECONSIDERATION

If the goal is not met, a bidder or proposer in order to be responsive must have made a good faith effort to meet the UDBE goal by documenting commitments for participation by sufficient UDBE firms, or document adequate good faith efforts to actively and aggressively obtain participation by a sufficient number of UDBE firms. An administrative review (see Section 26.53, CFR, Part 26) and judgment call of the good faith efforts should be made prior to award in each instance by the local agency. If the local agency determines that the apparent successful bidder or proposer has failed to meet the good faith requirements, the local agency before awarding the contract must provide the bidder or proposer the opportunity for administrative reconsideration in accordance with Section 26.53, CFR, Part 26.

## SUBSTITUTIONS

After a contract has been executed which specified goals for UDBE participation, adequate good faith efforts are required for any needed substitution of UDBE subcontractors to the extent needed to meet the contract goal.

Local agencies must require a prime contractor or consultant not to terminate for convenience a UDBE subcontractor listed in the Local Agency Bidder UDBE Commitment (Construction Contracts) or a Local Agency Proposer UDBE Commitment (Consultant Contracts) form (or an approved substitute UDBE firm) and have the work performed of the terminated subcontract with its own forces or those of an affiliate without the local agency's prior written consent.



When a UDBE subcontract is terminated, or fails to complete its work on the contract for any reason, the local agency must require the prime contractor or consultant to make good faith efforts to find another UDBE contractor to substitute for the original UDBE. These good faith efforts shall be directed at finding another UDBE to perform at least the same amount of work under the contract as the UDBE that was terminated to the extent needed to meet the contract goal.

## **NONCOMPLIANCE**

Local agencies must include in each prime contract a provision for appropriate administrative remedies that will be involved if the prime contractor or consultant fails to comply with the good faith efforts requirement during the contract.

## **9.10 REFERENCES**

49 CFR, Part 26 (DBE Regulations)  
49 CFR, Part 21 (Title VI Regulations)  
49 CFR, Part 27 (Accessibility)  
23 CFR 200 and 230 (EEO Contractor Compliance)  
28 CFR, Part 35 (Accessibility)  
23 USC 140(a) (EEO Contractor Compliance)  
29 USC 791 et. Seq. (Accessibility)  
42 USC 12101 et. Seq. (Accessibility)  
California Business and Professions Code, Section 7108.5 (Prompt Payment)  
Title 24 of the California Government Code (Accessibility)

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**EXHIBIT 9-A CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS  
ENTERPRISE IMPLEMENTATION AGREEMENT FOR LOCAL AGENCIES**

**CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
DISADVANTAGED BUSINESS ENTERPRISE  
IMPLEMENTATION AGREEMENT  
FOR  
LOCAL AGENCIES**

## **CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE IMPLEMENTATION AGREEMENT**

For the City/County of \_\_\_\_\_, hereinafter referred to as  
“RECIPIENT.”

### **I Definition of Terms**

The terms used in this agreement have the meanings defined in 49 CFR § 26.5.

### **II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)**

The RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement (hereinafter referred to as Agreement). The RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

It is the policy of the RECIPIENT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

### **III Nondiscrimination (§26.7)**

RECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, the RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

#### **IV Annual DBE Submittal Form (§26.21)**

The RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed “Local Agency DBE Annual Submittal Form (Exhibit 9-B)” by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

#### **V Race-Neutral Means of Meeting the Overall Statewide Annual DBE Goal (§26.51)**

RECIPIENT must meet the maximum feasible portion of its AADPL by using race neutral means of facilitating DBE participation. Race neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory through print and electronic means to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

## **VI Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal (§26.51(d))**

RECIPIENT must establish contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet any portion of your AADPL you do not project being able to meet using race neutral means. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian-Pacific Americans.

## **VII Quotas (§26.43)**

RECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

## **VIII DBE Liaison Officer (DBELO) (§26.25)**

RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment \_\_\_\_\_ to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

**IX Federal Financial Assistance Agreement Assurance (§26.13)**

RECIPIENT will sign the following assurance applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR, Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

**X DBE Financial Institutions (§26.27)**

It is the policy of the RECIPIENT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

**XI Directory (§26.31)**

RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's Web site at : [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

**XII Required Contract Clauses (§§26.13, 26.29)**

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

**A. Contract Assurance**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boilerplate Contract Documents on the Internet at [www.dot.ca.gov/hq/LocalPrograms](http://www.dot.ca.gov/hq/LocalPrograms) under "Publications."]

## **B. Prompt Payment**

### **Prompt Progress Payment to Subcontractors**

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-day is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **Prompt Payment of Withheld Funds to Subcontractors**

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.



3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **XIII Local Assistance Procedures Manual**

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published *Local Assistance Procedures Manual* (LAPM).

### **XIV Transit Vehicle Manufacturers (§ 26.49)**

If FTA-assisted contracts will include transit vehicle procurements, RECIPIENT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements; to certify that it has complied with the requirements of 49 CFR, Part 26, Section 49.

### **XV Bidders List (§26.11(c))**

The RECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of the firm.

### **XVI Reporting to the DLAE**

RECIPIENT will promptly submit a copy of Local Agency Proposer UDBE Commitment (Consultant Contracts), (Exhibit 10-O1) or Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1) of the LAPM to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2) or Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2) or of the LAPM to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors of the LAPM immediately upon completion of the contract for each consultant or construction contract.

## **XVII Certification (§26.83(a))**

RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted contracts.

## **XVIII Confidentiality**

RECIPIENT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

By \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Print Name and Title) ADMINISTERING AGENCY  
(Authorized Governing Body Representative)

Phone Number: \_\_\_\_\_

This California Department of Transportation's Disadvantaged Business Enterprise Program Implementation Agreement is accepted by:

\_\_\_\_\_  
[Signature of DLAE]

Date: \_\_\_\_\_

\_\_\_\_\_  
[Print Name of DLAE]

**Distribution:** (1) Original – DLAE  
(2) Signed copy by the DLAE – Local Agency

(Updated: March 4, 2009)

## EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT \_\_\_\_\_  
District Local Assistance Engineer

The amount of the Annual Anticipated DBE Participation Level (AADPL) and methodology are presented herein, in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City/County/Region of \_\_\_\_\_, submits our AADPL information. We have established an AADPL of \_\_\_\_\_ % (\_\_\_\_\_ % Race Neutral; \_\_\_\_\_ % Race Conscious) for the Federal Fiscal Year \_\_\_\_\_ / \_\_\_\_\_, beginning on \_\_\_\_\_ and ending on September 30.

Methodology

(Please attach the methodology used to determine the AADPL. See Chapter 9, Section 9.7 of the *Local Assistance Procedures Manual* (LAPM) for guidance in developing the AADPL.)

Disadvantaged Business Enterprise Liaison Officer (DBELO)

(Please provide the name, address, phone number, fax number, and electronic mail address of the DBELO for the coming Federal Fiscal Year.)

Planned Race Neutral Measures

(Please detail the race neutral measures your local agency plans to implement for the upcoming Federal Fiscal Year per 49 CFR, Part 26.51 and Section V of the California Department of Transportation DBE Program Implementation Agreement for Local Agencies.)

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor. (Attached is a listing of the three methods. On the attachment, please designate which prompt payment provision the local agency will use.)

Prompt Pay Enforcement Mechanism

49 CFR, Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause with the local agency's prior written approval. **Please briefly describe the monitoring and enforcement mechanisms in place to ensure that all subcontractors, including DBEs, are promptly paid.**

\_\_\_\_\_  
(Signature )

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Print Name and Title)  
ADMINISTERING AGENCY  
(Authorized Governing Body Representative)

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
(Signature of Caltrans District Local Assistance Engineer [DLAE])

\_\_\_\_\_  
Date

**Distribution:** (1) Original - DLAE  
(2) Signed copy by the DLAE – Local Agency

DBE Annual Submittal Form (07/31/09)

## (Attachment)

**Prompt Payment of Withheld Funds to Subcontractors**

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

- ☐ **Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- ☐ **Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- ☐ **Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

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## EXHIBIT 9-C LOCAL AGENCY ADA ANNUAL CERTIFICATION FORM

Local Agency ADA Annual Certification Form  
49 CFR, Part 27:  
Nondiscrimination of the Basis of Disability in  
Programs or Activities  
Receiving Federal Financial Assistance.

Local Agency: \_\_\_\_\_

Program Year: \_\_\_\_\_

Date Certification submitted: \_\_\_\_\_

I. Name of ADA Coordinator: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

II. ADA Complaint Procedure Adopted:

Yes: \_\_\_\_ Date of Adoption: \_\_\_\_\_

No: \_\_\_\_ Planned Date of Adoption: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

III. Self-evaluation completed:

Yes: \_\_\_\_ Date of Completion: \_\_\_\_\_

No: \_\_\_\_ Planned Date of Completion: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

System established for periodically reviewing and updating the evaluation: \_\_\_\_\_

IV. Transition Plan completed:

Yes: \_\_\_\_ Date of Completion: \_\_\_\_\_

Date of Implementation: \_\_\_\_\_

No: \_\_\_\_\_ Planned Date of Completion: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

- | V. Policies, procedures, and criteria for implementing ADA compliance improvements in maintenance and capitol improvement programs have been reviewed and the required revisions have been made:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

- | VI. Division of State Architect (DSA) Checklists are used to verify compliance of design packages, standard plans and field inspections to ensure compliance with both State and federal accessibility standards:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

DSA web site: [http://www.dsa.dgs.ca.gov/Access/ud\\_accessmanual.htm](http://www.dsa.dgs.ca.gov/Access/ud_accessmanual.htm)

*Reminder: State of California Government Code Section 4454 requires Division of State Architect (DSA) review and approval of the plans and specifications for local agency pedestrian projects using State funds.*

- | VII. Standard Plans are reviewed and updated on an ongoing basis for full ADA and California Accessibility compliance:

Yes: \_\_\_\_\_ No: \_\_\_\_\_



## EXHIBIT 9-D AADPL CALCULATIONS INCLUDING UDBES

**AADPL Calculations Including UDBEs****Definitions:**

- **DBE** – Disadvantaged Business Enterprise. A for-profit “small business concern” that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individual must also control the management and daily business operations. This individual who is a citizen (or lawfully admitted permanent residents) of the United States and who is: (1) an individual whom a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, (2) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged by the U.S. Small Business Administration. (See 49 CFR, Part 26.)
- **UDBE** – Underutilized DBE. DBE classes that have been determined in the 2007 Caltrans Disparity Study to have a statistically significant disparity in their utilization in previously awarded transportation contracts. UDBEs include: African Americans, Native Americans, Asian-Pacific Americans, and Women.
- **Non-UDBE** – The two DBE classes (Hispanic American and Subcontinent Asian American) that have been determined in the 2007 Caltrans Disparity Study to not have a statistically significant disparity in their utilization in previously awarded transportation contracts.
- **AADPL** – Annual Anticipated DBE Participation Level. This is the overall Local Agency goal based on demonstrated evidence of the availability of DBEs relative to all businesses that are ready, willing and able to participate on federally funded contracts.
- **RC AADPL** – Race Conscious portion of AADPL.
- **RN AADPL** – Race Neutral portion of AADPL.
- **Market Area** – Counties in the agency’s geographic area where contractors have historically bid on similar contracts.

**Introduction:**

Agencies shall use Exhibit 9-B from the *Local Assistance Procedures Manual* (LAPM) to report the Annual Anticipated DBE Percentage Level (AADPL) and methodology to Caltrans. The Race Conscious portion of the AADPL is the portion the agency believes it will not be able to meet using Race Neutral means alone. In the absence of information relating to an agency’s ability to meet the Race Neutral portion, the Race Conscious portion should be the same as the entire AADPL, and the Race Neutral portion should be zero. As always, individual contract goals should be adjusted throughout the year as the agency progress in attaining DBE participation is assessed.

There are several ways to calculate an AADPL. A method other than what is shown below may be used, as approved by the District DBE Coordinator. One such alternate method is the use of a current bidders list.

**\*\*Important Note:** While the determination of an AADPL utilizes the same calculation as before (during the Race Neutral mode), the Race Conscious/Race Neutral breakdown should always include consideration of not only the availability of UDBEs (Race Conscious), but also the specific non-UDBEs and the likelihood that they will be used on these contracts. If the likelihood is high that these non-UDBEs would not be used on the contracts, they should be removed from consideration. This would result in a higher RC AADPL and a lower RN AADPL. Periodically throughout the contracting year, these methods and assumptions should be revisited to more accurately tailor future contract goals.

### **AADPL Calculation:**

First, determine the projects that the agency anticipates awarding in the upcoming Federal Fiscal Year (FFY). List these projects, including both construction and consultant contracts. Next, determine the various work types and amounts of work that will be involved, using the work categories and codes that can be found on the California Unified Certification Program (CUCP) Web site, as explained below. For each Work Category, calculate the percentage (Weight) of the total contract work to be performed.

To determine the number of DBE firms (for the *numerator* in the calculation):

1. For each NAICS Work Category, determine total number of DBEs in the agency's Market Area that can perform that type of work. To do this, use the CUCP web site, which can be accessed by going to: [http://www.dot.ca.gov/hq/bep/dbe\\_query.htm](http://www.dot.ca.gov/hq/bep/dbe_query.htm) and click on the "Click here to Access the DBE Query Form" link.
2. On the resulting page, go to the "County" box and highlight all the counties in the agency's Market Area. The control key can be used to highlight more than one county at a time.
3. Click on the appropriate 2-digit code in the "NAICS Categories" box. This will automatically bring up the more detailed 6-digit NAICS Work Category codes in a new box. Highlight the appropriate 6-digit code. Scroll down to "License Type" and highlight the appropriate license (e.g., Electrical Contractor). Finally, click the "Start Search" button at the bottom of the page. This will give the number of DBE firms available to do work in that NAICS Work Category, followed by a list of individual firms.
4. To narrow it down to the agency's Market Area, print out the list and cross off any firms that are not located within the Market Area counties. This will result in a list of DBE firms that are in the agency's Market Area. The number of firms remaining on the list becomes the numerator for that Work Category.
5. Repeat this process for each Work Category.

To determine the total number of firms (for the *denominator* in the calculation):

1. For each NAICS Work Category, determine the total number of firms in the agency's Market Area that are willing to perform that type of work. To do this, go to the following web site:  
<http://censtats.census.gov/cbpnaic/cbpnaic.shtml>
2. At the top of the page, select "California" and click on the "Go" button.
3. On the next page, use the drop-down menu to select one of the counties in the agency's Market Area, and click the "Select" button. The "Industry Codes" listed are the same as the NAICS codes. For each 2-digit category that is being used, click on the "Detail" button. This will bring up a list of all of the 6-digit Work Category codes contained within that category.
4. For each 6-digit Work Category to be used, click the "Detail" button to get a county-by-county list of the total number of establishments. Add the numbers for each county in the Market Area to get the total number of firms for this type of work, which becomes the denominator for that Work Category.
5. Repeat this process for each Work Category.

After completing the above tasks, make a table showing the following information for each NAICS Work Category:

- A. Number of DBE Firms (numerator)
- B. Number of Total Firms (denominator)
- C. Percentage of total contract funding in the NAICS Work Category (Weight).

Use this information as shown in the example that follows.

### **AADPL Calculation Example:**

An agency has \$200,000 in Total Project Funding (both federal and local/state \$), broken down into the following Work Categories:

Contract #1 – <u>Main Street Re-paving</u> : (\$100,000 contract)		
(NAICS Code) 237310 - Highway and Street Construction	= \$80,000	= 40% Funding
238210 - Electrical Work	= \$20,000	= 10% Funding
Contract #2 – <u>4<sup>th</sup> Street Design</u> : (\$100,000 contract)		
541330 - Civil Engineering Services	= \$100,000	= 50% Funding

In order to determine the AADPL base figure, first compute the AADPL formula for each Work Category:

$$\text{AADPL (per Work Category)} = \left[ \sum \frac{\text{No. of DBEs in a Work Category}}{\text{No. of All Firms in same Work Category}} \times \text{Weight} \right] \times 100$$

Each Work Category AADPL is then multiplied by its percentage (Weight) of the total work to be performed. The resulting numbers are then added up to obtain the overall AADPL Base Figure:

AADPL (Base Figure) =

$$\left[ \frac{\text{\# of DBEs in 237310}}{\text{\# of all firms in 237310}} \times 0.4 + \frac{\text{\# of DBEs in 238210}}{\text{\# of all firms in 238210}} \times 0.1 + \frac{\text{\# of DBEs in 541330}}{\text{\# of all firms in 541330}} \times 0.5 \right] \times 100$$

### Race Conscious Portion of AADPL (Using UDBEs):

To obtain the **RC AADPL**, use the same method shown above, except substitute UDBEs for DBEs in the formula.

To get the number of UDBE firms (UDBE firms = male-owned UDBE firms + all female-owned firms), eliminate all firms on the DBE lists from the CUCP database that are not designated as either female-owned or male-owned with the UDBE-designated ethnicities (see definitions above).

As before, make a table showing the number of UDBE firms, number of total firms, and Work Category Weights. Insert these as appropriate in the formula below:

$$\text{RC AADPL} = \left[ \sum \frac{\text{No. of UDBEs in a Work Category}}{\text{No. of All Firms in same Work Category}} \times \text{Weight} \right] \times 100$$

### Race Neutral Portion of AADPL:

The Race Neutral portion of the AADPL is the overall AADPL minus the Race Conscious portion.

$$\text{RN AADPL} = \text{AADPL} - \text{RC AADPL}$$

### Entering Information onto Exhibit 9-B:

After adjusting the AADPL and RC/RN breakdowns determined above for other factors as needed (see **\*\*Important Note**), enter the adjusted AADPL figure, as well as the adjusted Race Conscious and Race Neutral AADPLs, onto Exhibit 9-B.